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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 THOMAS FRENCH,

9 Plaintiff,

10 v.

11 PIERCE COUNTY; ARRON WOLFE;
JASON CHAVEZ,

12 Defendants.

CASE NO. 3:22-cv-5079

ORDER ON DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

13
14 **1. INTRODUCTION**

15 This matter comes before the Court on Defendants Arron Wolfe and Jason
16 Chavez's Motion for Summary Judgment. Dkt. No. 32. The Court has reviewed the
17 papers submitted in support of and in opposition to the motion, heard oral
18 argument from the parties, and is otherwise completely informed. For the reasons
19 explained below, the Court GRANTS Defendants' motion.

20 **2. BACKGROUND**

21 On November 3, 2019, Curtis French was at home with his family in Tacoma,
22 Washington, including his son, Thomas French; daughter-in-law; two
23 grandchildren; and his former spouse, Krystal French, with whom he had recently

1 gotten back together.¹ Dkt. No. 42 ¶ 3. According to a family member, Curtis had
2 been dealing with issues at home and at work at the time. *Id.* ¶ 4. On November 3rd
3 Curtis argued with Krystal and drank a 750ml bottle of whiskey. *Id.* ¶ 5.

4 After finishing the bottle, Curtis “began stumbling around the house, [and]
5 speaking and yelling incoherently.” *Id.* ¶ 6. At some point, he picked up a “small”
6 knife and “began making what seemed to be threats towards the adults in the
7 house.” *Id.* Curtis’s daughter-in-law called 911 shortly after 6 P.M. because she
8 “thought it would be safer for everyone, including himself, if [Curtis] left the house.”
9 She felt he would only leave, however, “if he was forced to.” *Id.* ¶¶ 7-8.

10 The 911 call “seemed to make Curtis angry.” *Id.* ¶ 8. He was walking around
11 the house making threatening gestures with the knife, and at one point, threw the
12 knife at the wall. *Id.* While still on the 911 call, Curtis’s daughter-in-law and
13 Krystal left through the front door of the house, and Thomas took one of his
14 children out the backdoor while his other child slept upstairs. *Id.* ¶ 9. Curtis’s
15 daughter-in-law described Curtis as “really, really, drunk” to the 911 dispatcher. *Id.*
16 ¶ 8.

17 Curtis went to the front porch of the house where he stood alone when Pierce
18 County Sheriff’s deputies Arron Wolfe and Jason Chavez arrived. *Id.* ¶ 11. When
19 the deputies arrived, they identified themselves as police and directed Curtis to
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22 ¹ Following Plaintiff’s lead from his Second Amended Complaint, the Court refers to
23 Curtis French by his first name only to avoid confusion with his other family
members. The Court refers to Thomas French by his first name for the same reason.
No disrespect is meant.

1 “come out and let [us] see your hands,” but Curtis did not respond. Dkt. No. 33-1 at
2 4-5.

3 The officers stood in the middle of the street as Curtis’s daughter-in-law “saw
4 [him] stumble down the steps toward the Officers.” Dkt. No. 42 ¶¶ 12, 14. According
5 to her, Curtis swayed and then fell onto a car parked in front of the house. *Id.* ¶ 14.

6 Deputy Wolfe used the flashlight on his rifle while Deputy Chavez used a
7 flashlight at which point they saw Curtis “in front of two vehicles parked towards
8 the house, just past a chain-link fence.” Dkt. Nos. 33-1 at 5-6; 33-2 at 3. According to
9 Defendants, they were approximately 25 to 30 yards from Curtis’s house. Dkt. No.
10 33-1 at 5-6.

11 Curtis held the knife in his left hand. *Id.* at 7. When the deputies ordered
12 Curtis to drop the knife, he responded, “Fuck you, kill me! Fuck you, kill me!” *Id.*
13 The deputies each recount that Curtis was “focused’ and “fixated” on them and
14 continued to advance toward the deputies. Dkt. Nos. 33-1 at 9; 33-3 at 8. Deputy
15 Chavez also recalls that “I want him to be focused on me[;] I don’t want him to go
16 back in the house[,] that was my big concern.” Dkt. No. 33-3 at 8. As Curtis
17 advanced toward the deputies, Deputy Chavez fired his taser at Curtis while
18 Deputy Wolfe held his rifle. *See id.* at 6-12.

19 The taser probe hit Curtis in the chest, but it did not “phase” Curtis. Dkt. No.
20 33-1 at 11. Curtis continued his advance toward the deputies, ignoring their
21 repeated commands to drop the knife. *Id.* at 13. Deputy Chavez ordered Curtis to
22 “Stop or I’ll shoot!” Dkt. 33-4 at 5. Curtis neither stopped nor dropped the knife, so
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1 Deputy Chavez and Wolf fired their weapons killing Curtis. Dkt. Nos. 33-2 at 4; 33-
2 4 at 5.

3 The parties dispute whether Curtis posed an immediate threat to the deputies
4 given his intoxication. His daughter-in-law recalls that he was “ignoring [the
5 deputies’] commands, but he was obviously intoxicated and impaired” and that he
6 was too drunk to walk in a straight line. Dkt. No. 42 ¶¶ 12, 14. She said he was
7 trying to regain his balance when the deputies shot him as he stood between the
8 cars. *Id.* ¶ 14. A neighbor, viewing the incident from across the street, stated Curtis
9 “seemed too drunk to be a threat at that time, especially when the officers were
10 standing in the street at what appeared to be a safe distance away from Curtis
11 when he was shot.” Dkt. No. 43 at ¶ 5. Deputy Chavez, however, described Curtis as
12 moving in a “deliberate, confident manner [with] his shoulders ... rolled back” as he
13 advanced just before the shooting. Dkt. 33-4 at 4.

14 Thomas (hereafter, “Plaintiff”) filed this lawsuit as the administrator of
15 Curtis’s estate. Plaintiff asserts a single cause of action against Defendants for the
16 use of excessive force in violation of Section 1983. Dkt. No. 29.

17 3. ANALYSIS

18 Defendants argue Curtis does not have a colorable Section 1983 excessive
19 force claim because they “did not violate a clearly established constitutional right,
20 and are, therefore, entitled to qualified immunity.” Dkt. No. 32 at 1. Plaintiff
21 responds that Curtis did not pose an immediate threat to Defendants when they
22 shot him, and that Defendants were on notice that Curtis had a constitutional right
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1 to be free from the use of deadly force under circumstances of this case. *See* Dkt. No.
 2 39.²

3 “[S]ummary judgment is appropriate when there is no genuine dispute as to
 4 any material fact and the movant is entitled to judgment as a matter of law.”
 5 *Frlekin v. Apple, Inc.*, 979 F.3d 639, 643 (9th Cir. 2020) (internal citation omitted).
 6 A dispute is “genuine” if “a reasonable jury could return a verdict for the nonmoving
 7 party” and a fact is material if it “might affect the outcome of the suit under the
 8 governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When
 9 considering a summary judgment motion, courts must view the evidence “in the
 10 light most favorable to the non-moving party.” *Barnes v. Chase Home Fin., LLC*, 934
 11 F.3d 901, 906 (9th Cir. 2019) (internal citation omitted). “[S]ummary judgment
 12 should be granted where the nonmoving party fails to offer evidence from which a
 13 reasonable jury could return a verdict in its favor.” *Triton Energy Corp. v. Square D*
 14 *Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). Summary judgment should also be granted
 15 where there is a “complete failure of proof concerning an essential element of the
 16 non-moving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

17 **3.1 Excessive force.**

18 The Court first examines whether Plaintiff has established a violation of
 19 Curtis’s constitutionally protected rights. A police officer’s use of deadly force to
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 22 ² In his response, French also argued that Defendants’ expert witness report was
 23 inadmissible under Fed. R. Evid. 702. At the hearing on Defendants’ motion, the
 Court reserved ruling on this argument because French stated this argument was
 also raised in his motion in limine.

1 restrain a subject is examined under the Fourth Amendment’s prohibition against
2 unreasonable searches and seizures. *Graham v. Connor*, 490 U.S. 386, 396–97
3 (1989). In reviewing any such use of deadly force, courts must “inquire ‘whether it
4 would be objectively reasonable for the officer to believe that the amount of force
5 employed was required by the situation he confronted.’” *Hart v. City of Redwood*
6 *City*, 99 F.4th 543, 549 (9th Cir. 2024) (quoting *Wilkins v. City of Oakland*, 350 F.3d
7 949, 954 (9th Cir. 2003)). “To assess the reasonableness of a particular use of force,
8 we balance ‘the nature and quality of the intrusion on the individual’s Fourth
9 Amendment interests’ against ‘the countervailing government interests at stake.’”
10 *Id.* (quoting *Miller v. Clark Cnty.*, 340 F.3d 959, 964 (9th Cir. 2003)).

11 Defendants use of deadly force against Curtis was an “unmatched” intrusion,
12 *Tennessee v. Garner*, 471 U.S. 1, 9 (1985), so the Court turns to the strength of the
13 government’s interests.

14 Courts consider three factors—the *Graham* factors—when making this
15 inquiry: (1) “the severity of the crime at issue,” (2) “whether the suspect poses an
16 immediate threat to the safety of the officers or others,” and (3) “whether he is
17 actively resisting arrest or attempting to evade arrest by flight.” *Smith v. City of*
18 *Hemet*, 394 F.3d at 701 (9th Cir. 2005) (citing *Graham*, 490 U.S. at 396). Ultimately,
19 it is the “totality of the circumstances” that will guide a decision about whether the
20 *Graham* standard has been met, *Hart*, 99 F.4th at 553, but whether the suspect
21 endangered the safety of the officers or others is “the most important single element
22 of the three specified factors,” *Chew v. Gates*, 27 F.3d 1432, 1441 (9th Cir. 1994).

1 During oral argument, Plaintiff conceded many important facts that guide
2 the Court's application of the *Graham* factors, including that: (1) Curtis was
3 intoxicated and armed with a knife, (2) Curtis advanced toward the officers while
4 armed with the knife, (2) Curtis yelled expletives at the officers (including
5 statements like "Fuck you, kill me"), (3) Curtis was non-compliant with the officers
6 commands to "Stop" and "drop the knife," and (4) the officers used non-deadly force
7 in the form of a taser before using deadly force. Thus, under the totality of the
8 circumstances, the officers were justified in their use of deadly force because they
9 reasonably perceived that Curtis posed an immediate threat to them and others.
10 *See Graham*, 490 U.S. at 396 ("The 'reasonableness' of a particular use of force must
11 be judged from the perspective of a reasonable officer on the scene, rather than with
12 the 20/20 vision of hindsight.").

13 Plaintiff tries to escape this conclusion by arguing there is a question of fact
14 that cannot be resolved on summary judgment about whether Curtis posed a threat
15 to the officers' or others' safety when he was shot. He points primarily to questions
16 about the distance between the officers and Curtis at the time of the shooting and
17 Curtis's level of intoxication. *See* Dkt. No. 39 at 6. But as explained below, these
18 asserted factual disputes do not "eliminate any of [the] core, undisputed
19 circumstances" that lead to the conclusion that Curtis posed an immediate threat to
20 Defendants. *See Hart*, 99 F.4th at 550.

21 First, Plaintiff contends there is a discrepancy between Deputy Chavez's and
22 Deputy Wolfe's account about the distance between them and Curtis when deadly
23 force was used. Plaintiff claims that Deputy Chavez said Curtis was about 12-15

1 feet away when he used his taser, while, according to Plaintiff, Deputy Wolfe claims
2 Curtis was 12 yards or 36 feet away. Dkt. No. 39 at 6. But Plaintiff's attempt to
3 demonstrate a genuine dispute about the distance regarding the distance between
4 Defendants and Curtis falls short because he omits the context of Deputy Wolfe's
5 statement: "[Curtis] was about 12 yards away when I saw Taser prongs from
6 Deputy Chavez's Taser strike [him] . . . He turned as if to see where the prongs had
7 come and looked toward Deputy Chavez who had just shot him with the Taser. He
8 began to take more aggressive steps." Dkt. No. 33-2 at 4. In other words, Deputy
9 Wolfe claims that Curtis continued to close the distance between himself and the
10 Defendants after being hit with the Taser at approximately 12 yards. *See id.*

11 Even assuming that Curtis was 36 feet away from Defendants at the time of
12 the shooting, Plaintiff cites no cases supporting the proposition that distance alone
13 is dispositive when determining whether a suspect posed an immediate threat to
14 law enforcement. *See* Dkt. No. 39. Rather, courts look to the totality of the
15 circumstances to determine whether a suspect posed an immediate threat to the
16 safety of the officers or others. *Hart*, 99 F.4th at 553.

17 For example, in *Est. of Hernandez by & through Hernandez v. City of Los*
18 *Angeles*, 96 F.4th 1209, 1217 (9th Cir. 2024), the Ninth Circuit held that an officer
19 acted reasonably when using deadly force against a suspect who was 40 feet away.
20 In *Hernandez*, the officer believed the suspect held a knife and gave him multiple
21 orders to "stay right there!" *Id.* The suspect continued to approach the officer, with
22 his arms out, yelling in the officer's direction, and ignoring her commands to drop
23 the knife. *Id.* The Ninth Circuit held that "[u]nder these circumstances, use of

1 deadly force to eliminate the objectively apparent threat that Hernandez
2 imminently posed was reasonable as a matter of law.” *Id.* About the distance
3 between the officer and suspect at the time of the shooting, the court reiterated
4 “there is no rule that officers must wait until a knife-wielding suspect is literally
5 within striking range, risking their own and others’ lives, before resorting to deadly
6 force.” *Id.* (quoting *Reich v. City of Elizabethtown*, 945 F.3d 968, 982 (6th Cir. 2019).

7 Like the suspect in *Hernandez*, the undisputed facts show that Curtis—
8 whether he was 12 feet away or 36 feet away and closing—was armed with a knife
9 and continued to close the distance between himself and Defendants while ignoring
10 their commands to stop. *Id.*; see also *Reich*, 945 F.3d at 982 (6th Cir. 2019) (holding
11 that shooting of approaching knife-wielding suspect within six feet was reasonable
12 and that even shooting a knife-wielding suspect 36 feet away would not violate
13 clearly established law). Unlike the officers in *Hernandez*, Defendants first
14 attempted to use non-lethal force in the form of a taser before resorting to deadly
15 force. See 96 F.4th at 1214. Thus, under these circumstances, it makes no difference
16 whether Curtis was 12 feet or 36 feet away in the larger context of his actions and
17 the officers’ use of deadly force.

18 Next, French argues that Curtis, “[i]n his impaired state . . . did not have the
19 faculties to make a credible threat to the Deputies’ safety” Dkt. No. 39 at 12.
20 Plaintiff offers no case law, however, holding that when analyzing an excessive force
21 claim, an armed suspect’s immediate threat to police officers is canceled out when
22 the suspect is intoxicated. See Dkt. No. 39. In fact, under questioning at oral
23 argument, Plaintiff conceded that intoxicated suspects do not enjoy a more lax

1 standard when analyzing excessive force claims. Plaintiff argued instead that
2 intoxication and mental health should also be considered when analyzing whether a
3 suspect poses an immediate threat.

4 To be sure, when analyzing the use of deadly force on an intoxicated or
5 mentally ill suspect, additional factors like the availability of less intrusive force
6 and the use of proper warnings are to be considered alongside the traditional
7 *Graham* factors. *See Vos v. City of Newport Beach*, 892 F.3d 1024, 1033-34 (9th Cir.
8 2018); *see also Demarest v. City of Vallejo, California*, 44 F.4th 1209, 1225 (9th Cir.
9 2022) (“In judging the reasonableness of the force used, the trier of fact should
10 consider all relevant circumstances . . .”). But the Ninth Circuit has “refused to
11 create two tracks of excessive force analysis, one for the mentally ill and one for
12 serious criminals . . .” *Vos v. City of Newport Beach*, 892 F.3d 1024, 1034 n.9 (9th
13 Cir. 2018) (internal quotation marks and citation omitted). This makes sense
14 because the presence of “mental illness or intoxication does not reduce the
15 immediate and significant threat a suspect poses.” *Sok Kong Tr. for Map Kong v.*
16 *City of Burnsville*, 960 F.3d 985, 993 (8th Cir. 2020). To the contrary, these
17 conditions can contribute to the unpredictability of the situation and increase the
18 danger for all involved in a law enforcement encounter. *See Marvin v. City of*
19 *Taylor*, 509 F.3d 234, 246 (6th Cir. 2007) (“Drunk persons are generally
20 unpredictable and Marvin’s unpredictability created a situation where it was not
21 objectively unreasonable for the Defendants to take the extra precaution of
22 handcuffing Marvin behind his back rather than in front.”).

1 Here, Defendants repeatedly warned a very intoxicated Curtis to stop and to
2 drop the knife. They used non-lethal force in an attempt to stop his advance, but
3 Curtis continued forward armed and shouting threats when the officers resorted to
4 deadly force. *See* Dkt. No. 42 ¶ 12. This was a chaotic scene and perhaps different
5 actions by those involved may have led to a different outcome, but officers “need not
6 avail themselves of the least intrusive means of responding to an exigent situation;
7 they need only act within that range of conduct we identify as reasonable.” *Scott v.*
8 *Henrich*, 39 F.3d 912, 915 (9th Cir. 1994).

9 It is tragic whenever the police use deadly force, especially on someone
10 experiencing a mental health emergency or intoxication. But viewing the facts in
11 the light most favorable to Plaintiff and drawing all reasonable inferences in his
12 favor, the undisputed facts establish that Defendants’ use of deadly force against
13 Curtis was objectively reasonable. Whether Curtis was 12 feet or 12 yards from
14 Defendants, of clear mind or diminished in some way, does not change this
15 conclusion. *See Hart*, 99 F.4th at 555 (“Ultimately, that an individual who poses an
16 immediate threat may be mentally ill does not remove the case from the *Graham*
17 analysis . . . and any mental health crisis Hart experienced is considered in view of
18 the surrounding circumstances.”). Thus, Defendants have shown there are no
19 genuine disputes about any material fact and that they are entitled to judgment as
20 a matter of law.

21 Because there has been no Fourth Amendment violation, the Court does
22 reach the issue of qualified immunity.
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4. CONCLUSION

For the reasons stated above, Defendants' Motion for Summary Judgment is GRANTED, and Plaintiff's case is dismissed with prejudice.

Dated this 28th day of May, 2024.



Jamal N. Whitehead
United States District Judge